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June 20, 1994

Mr. William F. Caton
Acting Secretary,
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

Via Messenger

Re: **CC Docket No. 92-115**
Implementation of Sections 3(n) and 332
of the Communications Act
Regulatory Treatment of Mobile Services

Dear Mr. Caton:

Submitted herewith on behalf of the Committee for Effective Cellular Rules are an original plus ten (10) copies of its Comments with respect to the above-referenced docket.

Kindly contact my office directly with any questions concerning this submission.

Respectfully submitted,



William J. Franklin
Attorney for the Committee for
Effective Cellular Rules

Encs.

cc: Committee for Effective
Cellular Rules

No. of Copies rec'd 0/10
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tions filed with respect to unserved areas. The qualifications of CECR have been demonstrated by declarations of its members, and the facts supporting CECR's standing here are matters of public record.

THE COMMISSION SHOULD EITHER CONTINUE TO LICENSING OF ALL CELL SITES OR, AS A LESSER ALTERNATIVE, CONFIRM THAT ITS ACTION DOES NOT RETROACTIVELY LEGITIMIZE CONDUCT WITH RESPECT TO SPECIFIC CELL SITES WHICH VIOLATES THE COMMUNICATIONS ACT OR THE COMMISSION'S RULES.

In paragraphs 5-11 of the FNPRM the Commission advanced a series of proposals to amend its cellular rules. The Commission's proposals regarding Service Area Boundary ("SAB") extensions and the 1:500,000 map scale appear to be routine, and CECR interposes no objection thereto.

CECR opposes the Commission's proposal (FNPRM, ¶¶7-9) to eliminate the licensing of inner cell sites. Under the Commission's Rules, each cell site -- both inner and exterior -- must remain in compliance with numerous technical, environmental, land-use, and operational requirements. Elimination of licensing information for inner cell sites will greatly hinder, if not prevent, the enforcement of such rules.

For example, suppose a purported "inner" site is being operated above its power level or with an incorrect antenna, such that it is causing harmful interference to, or capturing subscribers from, an adjacent cellular system. If there is no record of the inner cell site, how can the adjacent carrier determine the source of the problem? How can the Commission's

field inspectors even locate the cell, or verify its proper operation?

Similarly, suppose a carrier discontinues the operation of an outer cell, such that a former "inner" cell now forms the boundary of the carrier's composite contour.^{2/} If there is no licensing record of the inner cell, the carrier is free to claim that cell was being properly operated at any height and power which complies with Section 22.905, and which produces a predicted 32 dBu contour less than the cell being replaced. Upon that discontinuance, how will the Commission and other carriers know the discontinuing carrier's SAB contours?

The Commission's asserted justifications for this "cell site deregulation" pale in comparison with the resulting injury to the public interest. The Commission asserts that its existing license format produces licenses with a large number of pages ("over 80 pages") for major urban systems.^{3/} It also asserts that its procedures in maintaining the licensing database are cumbersome. Both of these "harms" reflect flaws in the Commission's computer and licensing systems, and can be readily

^{2/} This could commonly happen when the carrier replaces a low-power, low-height cell close to its composite-contour border with a high-power, high-height cell further within the market.

^{3/} The Commission also incorrectly asserts that it must reprint a new authorization upon every license modification of a cellular system. However, this action is discretionary with Commission staff. The Commission's Part 22 policies deem the combination of a construction permit and a date-stamped Form 489 reporting the completion of construction to be legally equivalent to a re-issued license.

corrected. For example, its cellular licenses can be reformatted to take less paper, perhaps by placing them in a tabular format.

Further, CECR is also concerned that, if the Commission disregards CECR's position and adopts its proposal, that the Commission will lose its authority to impose sanctions for prior violations of the Commission's Rules. For example, suppose a carrier failed to file a Form 489 for an inner cell site, an omission which would now result in a substantial forfeiture. Upon the adoption of this proposal, does the Commission intend to waive its enforcement authority for that prior violation, as well other cell-site specific violations?

The public interest would be poorly served if the Commission were to abandon its enforcement powers against inner cell site upon the adoption of its proposal here. Accordingly, as a less attractive alternative in the event the Commission proceeds as planned, the Commission should explicitly confirm that its action does not retroactively legitimize conduct with respect to specific cell sites which violates the Communications Act or the Commission's Rules.^{4/}

^{4/} Additionally, the Commission should expressly reserve its authority to request full Table MOB-2/MOB-3 information (operating and technical parameters) for any or all cell sites comprising a system. Further, carriers should be required to prepare and maintain such information in their files to reflect their actual system configuration, rather than merely to prepare such information after the fact when requested by the Commission.

FOR SYSTEM-INFORMATION UPDATE MAPS, THE COMMISSION SHOULD RETAIN INNER CELL-SITE INFORMATION AND REQUIRE THE FILING OF DATE-STAMPED FORM 489s WITH COMPLETE ENGINEERING FOR EACH CLAIMED EXTERIOR CELL.

Paragraph 10 of the FNPRM proposes to modify the Commission's procedures for System Information Update ("SIU") filings. Except for issues relating to inner cell sites, CECR will not interpose any objection.

However, deletion of inner cell information from SIU maps can create substantial problems in certain circumstances in determining a carrier's lawful coverage at the expiration of its five-year fill-in period. Specifically, suppose an exterior cell was improperly licensed, or was never licensed, but its coverage is claimed in the SIU map. In that situation, how can the Commission determine which legitimate cells become "exterior" once the offending cell is stricken from the map.

The Commission should ALSO require that a complete date-stamped copy of the FCC Form 489 showing the cell's engineering parameters for each exterior cell be filed with the SIU,^{5/} and not just the cells' engineering parameters alone. This procedure will not burden carriers since they must prepare and file such forms anyway. Further, the procedure exactly tracks the Commission's requirements for filing FCC Form 405 renewal applications. This procedure will serve the public interest by

^{5/} Where the Form 489 merely reports the completion of construction in accordance with a previous authorization, the Form 401 engineering should be supplied.

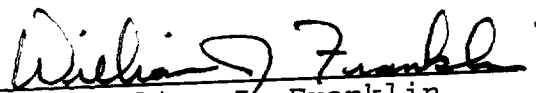
assisting in the effective determination of licensee compliance with the Commission's rules.

CONCLUSION

Accordingly, the Committee for Effective Cellular Rules respectfully requests that the Commission adopt its proposed revisions to Part 22 for cellular licensing with the rule changes suggested herein.

Respectfully submitted,

**COMMITTEE FOR EFFECTIVE
CELLULAR RULES**

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